IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 734 of 1985

with

CRIMINAL APPEAL NO. 818 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RABARI VERSI HEMA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 734 of 1985
   MR RN SHAH for appellants nos.1-10
   MR RM CHAUHAN, ld. APP for Respondent
2. Criminal Appeal No. 818 of 1985
   MR RM CHAUHAN, ld.APP for appellant - State
   MR RN SHAH for respondents-accused

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE K.M.MEHTA

Date of decision: 17/07/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

Criminal Appeal No.734 of 1985 is filed by ten original accused wherein they have challenged the judgment and order of conviction and sentence dated 29.6.1985 passed by the learned Addl.Sessions Judge, Banaskantha, at Palanpur, in Sessions Case No.18 of 1984. The learned Judge has acquitted all the accused for the offences punishable under Sec.307, 324 and 149 read with Sec.34 of IPC. The learned Judge, however, convicted all the accused for the offences punishable under Sec.325, 326, 447, 147, 148 and 149 read with Sec.34 of IPC and under Sec.135(1) of the Bombay Police Act. The learned Judge, for the offences punishable under Sec.325 and 149 read with Sec.34 of IPC, sentenced each of the accused to undergo RI for 1-1/2 year and to pay a fine of Rs.500/-, in default to undergo further RI for six months. Each of the accused was also sentenced to undergo RI for six months and to pay a fine of Rs.200/-, in default to undergo one month RI for the offence punishable under Sec.148 of IPC. No separate sentence for the offence punishable under Sec.147 was awarded. Similarly, no separate sentence for the offences punishable under Sec.323, 447 and 149 read with Sec.34 of IPC was imposed. The learned Judge, however, sentenced each of the accused to undergo one month RI and to pay a fine of Rs.100/-, in default to undergo further RI for 15 days for the offence punishable under Sec.135(1) of the Bombay Police Act. The sentence imposed on each of the accused is ordered to run concurrently. The learned Judge has also ordered that out of the amount of fine recovered, Rs.4,000/- be paid by way of compensation to injured informant Malabhai Vajabhai.

2. The State of Gujarat has filed Criminal Appeal No.818 of 1985 against all the accused for enhancement of sentence.

3. Both the appeals are heard together and disposed of by this common judgment.

4. The prosecution case in brief can be stated as under:

Informant Malabhai Vajabhai, resident of village Chalwada, Tal.Radhanpur had gone to the field of one Masa Devsi for the purpose of cultivation at about 6.00 or 6.30 a.m. on 12.6.1983 with bullocks and plough. When he was about to start his work, all the accused came there with weapons like sticks as well as dharias. According to the informant, they were telling him that as the father of the informant had deposed against them, they have come to kill him. According to the informant, Ramji Rabha - Accused No.7 was having a stick, Meva Rabha Accused No.2 was having a dharia, Vela Rabha - Accused No.5 was having a stick, Laxman Karsan - Accused No.3 was having a stick, Versi Hema - Accused No.1 was having a dharia, Hardas Hema - Accused No.4 was having a stick, Rama Mashru - Accused No.8 was having a stick, Arjan Masa Accused No.10 was having a dharia, Baba Versi - Accused No.9 was having a stick and Deva Versi - Accused No.2 was having a stick. On getting the threat from the accused, the informant started to run to save himself, however, all the accused followed him. As per the say of the informant, Accused No.7 gave a stick blow on the right leg and Accused No.5 inflicted a dharia blow on the left leg of the informant. The others have also started giving blows to the informant. The informant fell down and shouted for help. On hearing his shouts, Parmar Mahadevbhai, Vira Manjibhai and Parbat Mahadevbhai came there to save the informant. However, the accused have also beaten them. All the accused thereafter fled. The informant, who was in an injured condition was, thereafter removed in a tractor to Radhanpur Government Dispensary, where his complaint was recorded by PSI Mr.Gosai of Radhanpur Police Station. PSI Mr.Gosai thereafter reached the scene of offence and started the usual investigation and after completion of the same, submitted the chargesheet before the learned JMFC, Radhanpur, who committed the case to the Court of Sessions for trial.

5. The charge at Exh.3 was framed against the accused to which they pleaded not guilty and claimed to be tried. In their further statement recorded under Sec.313 of Cr.P.C. they denied their involvement in the offence and have stated that they were falsely involved because of enmity.

The learned trial Judge, after appreciating the oral as well as documentary evidence on record, at the end of the trial, found the accused guilty for the offence punishable under Sec.325, 148 and 149 read with Sec.34 of IPC and imposed sentence as stated earlier.

6. We have heard learned Counsel Mr.R.N.Shah appearing for the accused as well as Mr.R.M.Chauhan, learned APP appearing for the State. We have also gone through the relevant evidence on record. We have narrated the facts as per the version of the informant Malabhai and therefore, it would be merely a repetition to re-narrate his evidence. Informant Malabhai Vajabhai has been cross examined at length, however, nothing substantial has been brought out by the defence.

Dr.Ramanarayan Navlaka, PW1-Exh.18, the Medical Officer of the Referral Hospital, Radhanpur is examined by the prosecution to prove the injuries received by informant Malabhai Vajabhai as well as injured Virabhai Manjibhai and Parbat Mahadev. According to Dr.Navlaka, the informant came with police yadi at the hospital at 9.00 a.m. on 12.6.1983. On examining him, the following injuries were found by him:

(1) C.L.W. of about 3"x1/2" muscle deep situated on right leg in the lower 1/3rd. Margins are irregular with fracture of Tibia on lower 1/3rd and Fibula at upper and lower end.

(2) C.L.W. of about 1"x1/4" muscle deep situated over left leg at upper part, margins are irregular and also a C.L.W. of about 1"x1/4" muscle deep situated on the lower part of left leg, muscle had come out from the wound, bleeding present. Fracture of the shaft of Tibia lower 2/3rd and terminal part and also fracture of the Fibula on lower end.

(3) C.L.W. of about 1"x1/2" situated over the right upper arm, margins are irregular.

(4) Diffuse swelling with lacerated wound of about 1/2"x1/4" situated over the lower end of forearm, right side with fracture of the radius at junction of upper 2/3rd and lower 1/3rd.

(5) Contusion of about 3-1/2"x1" situated over the right upper arm, red in colour.

(6) Pachy contusion of 1-1/2"x1/2" over the right leg.

(7) Pachy contusion of about 3-1/2"x1/2" in diameter situated over right gluteal region, red in colour.

(8) Diffuse swelling over the left wrist joint, no fracture.

(9) C.L.W. of about 1/2"x1/4" skin deep situated over the right thumb.

(10) C.L.W.of about 1/4"x1/4" situated on the left thumb.

(11) Rounded abrasion of 1/2 cm. in diameter situated over the medial aspect of right knee.

(12) Abrasion of about 1"x1/4" situated over the left knee, red in colour.

In the opinion of the Doctor, these injuries can be caused by hard and blunt substance like Lathi (stick). He has further stated that the person was referred to the Civil Hospital, at Ahmedabad for further treatment. He has produced the certificate of injuries received by the informant at Exh.19.

Vira Manjibhai, PW4-Exh.32, in his evidence has deposed that on 12.6.1983, he, in the company of one Parmar Mahadev and Parbat Mahadev had started from village Chalwada to Josang. When they reached near the field of Masa Devji, they heard the sound, "save...save". They all have thereafter gone to the field of Masa Devji and saw Malabhai Vajabhai was running and the accused were following. According to him, Accused No.7 was having a stick, Accused No.6 was having a dharia, and Accused No.5 was having a stick. The accused were telling that as the father of the informant had deposed against them, they would kill the informant. This witness tried to intervene, however, he was also beaten. According to him, Accused No.7 gave a stick blow on his left hand while Accused No.1 gave a dharia blow on the right side of his head and Accused No.6 gave a dharia blow causing injury on his left cheek. He thereafter ran towards his house to save himself. This witness has also gone with police yadi to the referral hospital at Radhanpur at about 1.30 p.m. and he was also examined by Dr.Navlaka. On examining him, the Doctor has found the following injuries:

(1) Diffuse swelling over the left side of forearm on lower part with painful wrist movements fracture of lower and of ulna.

(2) Contusion of about 1"x1/2" left side of lower anterior aspect of left side of the knee, reddish

blue in colour.

(3) Abrasion of about 1/2 cm. x 1/4 cm. with diffuse swelling of right thumb - no fracture.

(4) Contusion of about 4"1" situated over the right side of lower chest and hypochondrium, red in colour.

(5) Pachy rounded contusion over the left hypochondrium.

(6) Contused C.L.W. of about 1"x1/4" skin deep on left cheek, margins irregular.

(7) C.L.W. of about 3/4" x 1/4" skin deep, situated over right parietal region, scalp margin irregular.

According to the Doctor, injury Nos.2 to 7 are simple. He has further stated that fracture heals in 4 to 6 weeks time if no complications arise. According to the Doctor injury No.1 was grievous and this injury can be caused by hard and blunt substance like Lathi (stick).

Parbat Mahadev, PW5-Exh.34 in his evidence has stated that he and his elder brother Parmar and Vira Manji had started to go to village Ghosan at about 6.00 O'clock in the morning to inquire about the tractor. When they reached near the field of Masa Devji, they heard sounds. Accordingly, they had gone to the said field. As per his evidence, the accused were beating Malabhai with sticks and dharias. He was also given blow by Accused No.6 by dharia on his head. Accused No.7 has also inflicted a stick blow. He has further stated that Vira Manji was also beaten, however, he does not remember as to who was beating Vira Manji. He thereafter had run away towards village Chalawad and from there, he had gone to Radhanpur Dispensary where the treatment of Malabhai was going on. On examining this witness, Dr.Navlakar found the following injuries:

(1) Abrasion of about 1/2" x 1/2" situated on the right leg on the shin of the Tibia.

(2) C.L.W. about 2-1/2" x 1" over left parietal region, margins are irregular, inverted and bleeding present.

According to the Doctor, both the above injuries are simple in nature and could be caused by hard and blunt

substance. The injuries were fresh and the healing period is a week if no complications arise.

7. From the aforesaid evidence of the injured, it it is clear that the informant as well as PW4 and PW5 were beaten by the accused on 12.6.1983 and as per the medical evidence, the injuries received by them are by hard and blunt substance like sticks. From the cross examination of these witnesses, as observed earlier, nothing substantial has been brought out by the defence. According to the prosecution, the incident had happened in the morning hours and all the accused are known to the prosecution witnesses and as it is not the case of mistaken identity. Once the accused are identified by the informant as well as PW4 and PW5, we have no hesitation in holding that the informant as well as PW4 and PW5 sustained injuries at the hands of the accused.

8. The next question that may arise for our consideration is as to whether all the accused can be convicted with the aid of Sec.147, 148 and 149 of IPC or the concerned accused, who, in fact caused injuries, can be convicted for their individual act? It is true that the informant has stated that all the accused were present in the field with weapons like sticks and dharias. However, out of 10 accused, he has involved Accused Nos.6 and 7 only for the injuries caused to him. In substance, he has specifically involved Accused Nos.6 and 7 who have caused fractures on his legs. As far as the other accused are concerned, he has merely stated that the other accused have also beaten him. The learned trial Judge convicted all the accused with the aid of Sec.147, 148 and 149 of IPC relying on the evidence of the informant Malabhai Vajabhai by holding that they were present at the time of incident. On minutely examining the evidence of Virabhai Manji, PW4-Exh.32, he does not refer to the presence of all the accused. It specifically refers to the presence of Accused Nos.5, 6 and 7. According to PW4, only these three accused caused injuries to him. True, PW4 has stated that the other accused were also present, however, without giving the details of the other accused except these three accused, in our opinion, the evidence of informant Malabhai Vajabhai does not have any corroboration from PW4. Likewise, PW5 - Parbat Mahadev also does not state regarding the presence of all the accused at the time of the incident. He merely refers to the presence of Accused Nos.6 and 7. As per the evidence of PW5, only these two accused are responsible for causing injuries to him. Thus, considering the aforesaid evidence, it is clear that the presence of all the accused at the time of

the incident, though stated by the informant, appears to be doubtful. Their presence is not established from the evidence of PW4 and PW5. Therefore, it is not possible for us to involve all the accused simply relying on the evidence of the informant. If at all they were present, as alleged by the informant, they could as well have participated in the offence. Since their presence is not established beyond reasonable doubt by PW4 and PW5, at least they deserve the benefit of doubt for their involvement in the offence in question. In this view of the matter, we are of the opinion that the learned trial Judge was not justified in convicting all the accused for the offence under Sec.325, 147, 148 and 149 read with Sec.34 of IPC. Therefore, the accused, as they caused injuries to the informant as well as PW4 and PW5, can at the most be, convicted for their individual act.

9. As per the evidence of the informant Malabhai Vajabhjai, Accused No.7 inflicted stick blow on his right leg while Accused No.5 inflicted dharia blow on his left leg. Thus, he specifically involves Accused Nos.5 and 7. Informant Malabhai gets corroboration regarding six injuries from the evidence of Dr.Navlaka. As per the medical certificate Exh.19 of informant, the Doctor has found C.L.W. of about 3" x 1/2" muscle deep situated on right leg in the lower 1/3rd. Margins are irregular with fracture of Tibia on lower 1/3rd and Fibula at upper and lower end. Injury No.2 is also C.L.W. of about 1" x 1/4" muscle deep situated over left leg at upper part, margins are irregular and also a C.L.W. of about 1" x 1/4" muscle deep situated on the lower part of left leg, muscle had come out from the wound, bleeding present. Fracture of the shaft of Tibia lower 2/3rd and terminal part and also fracture of the Fibula on lower end. However, as per the opinion of the Doctor, the aforesaid two injuries and other injuries are possible with hard and blunt substance like Lathi (stick) and since as per the say of the informant, Accused No.5 caused the said injury No.2 with dharia, which is not in conformity with the medical evidence. Therefore, we give benefit of doubt to Accused No.5 with regard to his involvement in causing the said injury. We, however, hold Accused No.7 responsible only for causing grievous hurt to informant Malabhai Vajabhai. In our opinion, he is liable to be convicted under Sec.325 of IPC. Similarly, PW4 Vira Manji involves Accused Nos.1, 6 and 7 when he states that Accused No.7 gave stick blow on his left hand while Accused No.1 caused a dharia blow on his right side of head while Accused No.6 caused dharia injury on his left cheek. This part of his evidence also gets corroboration from the medical evidence. From the medical certificate

at Exh.20, it is clear that Injury No.1 which states, "diffuse swelling over the left side of forearm on lower part with painful wrist movements fracture of lower end of ulna" and for the said injury, Accused No.7 can be convicted for the offence under Sec.325 of IPC. In the same way, Injury No.6 which is Contusive C.L.W. of about 1" x 1/4" skin deep on left cheek, margins irregular, which is caused by Accused No.6 with dharia and the same being a simple injury as per the opinion of Dr.Navlaka, Accused No.6 Meva Rabha can be held guilty for the offence under Sec.323 of IPC. Injury No.7 being C.L.W. of 3/4" x 1/4 skin deep, situated over right parietal region, scalp margin irregular which is caused by Accused No.1 with dharia, also a simple injury as per the medical opinion, he can be held guilty for the offence under Sec.323 of IPC.

Likewise, PW5 Parbat Mahadev has clearly involved Accused No.6 who has injured PW5 on the head with dharia and Accused No.7 who has beaten him with stick and the injury sustained by PW5 also gets corroboration from the medical evidence. From the medical certificate at Exh.26it is clear that Injury No.1 is abrasion of about 1/2" x 1/2" situated over the right leg on the shin of the Tibia red for which Accused No.7 can be held guilty while injury No.2 being C.L.W. of about 2-1/" x 1/4" x bone deep situated over the left parietal region of the scalp margins irregular inverted bleeding, for which Accused No.6 can be held guilty as per the medical evidence since both the injuries are simple in nature, we convict Accused Nos.6 and 7 for the offence punishable under Sec.323 of IPC for causing injuries to PW5.

10. In view of the above, considering the facts and circumstances of the case, and more particularly, in view of the fact that we are hearing these appeals after about 17 years of the incident which has taken place way back in the year 1983, and by this time, the parties have also in fact forgotten the incident, it would be too harsh if the accused are sent to jail since they are already on bail and in our opinion, instead of sending them to jail, the ends of justice would be met, if the injured are reasonably compensated. We therefore, pass the following order:

Criminal Appeal No.734 of 1985 is partly allowed by setting aside the judgment and order of conviction and sentence dated 29.6.1985 passed by the learned Addl.Sessions Judge, Banaskantha, at Palanpur, in Sessions Case No.18 of 1984, against the accused, except three accused namely, Rabari Versi Hema (Accused No.1),

Katotra Meva Rabha (Accused No.6) and Katotra Ramji Rabha (Accused No.7). Accused No.1 Rabari Versi Hema and Accused No.6 and Accused No.7, Katotra Meva Rabha respectively are convicted for the offences punishable under Sec.323 read with Sec.34 of IPC. Accused No.7 Katotra Ramji Rabha is also convicted under Sec.323 and 325 of IPC and is sentenced to suffer RI already undergone by him and shall pay fine of Rs.3,000/(Rupees Three thousand only), in default to undergo RI for 1-1/2 years for the offence under Sec.325 of IPC. There will not be a separate sentence for the offence punishable under Sec.323 of IPC. He shall pay the amount of fine within one month from today and on depositing the amount of fine, an amount of Rs.2,000/(Rupees Two thousand only) shall be paid to the injured Malabhai Vajabhai and Rs.500/- (Rupees Five hundred only) each to the injured Virabhai Manjibhai and Parbatbhai Mahadevbhai respectively of village Chalwada , Tal. Radhanpur, after proper verification. Accused No.1 Rabari Versi Hema is convicted for the offence under Sec.323 of IPC and is sentenced to suffer imprisonment already undergone by him and to pay a fine of Rs.750/-, in default to undergo RI for six months. He shall pay the amount of fine within four weeks from today. On depositing the amount of fine, the same shall be paid to the injured Virabhai Manjibhai of village Chalwada, Tal. Radhanpur, after proper verification. Accused No.6 Meva Rabha is convicted for the offence under Sec.323 of IPC and is sentenced to suffer imprisonment already undergone by him and to pay a fine of Rs.750/-, in default to undergo RI for six months. He shall pay the amount of fine within four weeks from today. On depositing the amount of fine, an amount of Rs.250/- (Rupees Two hundred and fifty only) each shall be paid to the three injured, namely, Malabhai Vajabhai, Virabhai Manjibhai, and Parbatbhai Mahadevbhai respectively, after proper verification.

11. Even though we have acquitted the rest of the accused, considering the concession given by Mr.R.N.Shah, learned Counsel appearing for the accused, the amount of fine as ordered by the trial Court which comes to Rs.4,000/- (Rupees Four thousand only) shall not be refunded to the accused.

12. So far as Criminal Appeal No.818 of 1985 is concerned, learned APP Mr.R.M.Chauhan is not in a position to make out a case for enhancement of sentence and rightly so, in our opinion, none of the accused can be convicted for the offences under Sec.307 or 326 of IPC. We accordingly see no merits in Criminal Appeal No.818 of 1985 preferred by the State for enhancement and

the same is hereby dismissed.

(Kshitij R. Vyas, J.)

(Kamal M. Mehta, J.)
Sreeram.